

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Registration No. 78/649,789
For the mark: "RITA PUNCH"

Sociedad Anonima Vina Santa Rita)	
)	
Opposer,)	
)	
v.)	Opposition No. 91170426
)	
Angela J. Barbato)	
)	
Applicant.)	
_____)	

APPLICANT'S MOTION FOR MORE DEFINITE STATEMENT

COMES NOW the Applicant, Angela J. Barbato ("Applicant"), and files her Motion for More Definite Statement in response to the Notice of Opposition of Sociedad Anonima Vina Santa Rita ("Opposer"), and sets forth the following in support thereof.

The Notice of Opposition in the instant case asserts as a statutory basis only 15 U.S.C. § 1063. While this jurisdictional provision generally allows for an opposition proceeding, citation thereto alone does not specify the substantive basis upon which the opposition is based. Indeed, that provision requires that the Opposer state the "grounds therefore." Id. Opposer has failed to sufficiently set forth the grounds, including the specific statutory provisions set forth in separate counts, upon which the Opposition is based.

As a result, Applicant is unable to frame a responsive

pleading, including appropriate affirmative defenses. Accordingly, a more definite statement is required pursuant to Fed.R.Civ.P. 10(b) and 12(e), such that each statutory basis (e.g. Section 2(d), Section 43(c), etc.) should each be set forth in a separate count, to which Applicant may then respond and assert appropriate affirmative defenses, or, if insufficient grounds are alleged, move to dismiss.

Federal Rules of Civil Procedure 8(a)(2) requires a pleader, in setting forth a claim for relief, to present "a short plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). Rule 10(b) provides that "each claim founded upon a separate transaction or occurrence . . . shall be stated in a separate count . . . whenever a separation facilitates the clear presentation of the matters set forth." Fed.R.Civ.P. 10(b).

These rules work together "to require the pleader to present his claims discretely and succinctly, so that his adversary can discern what he is claiming and frame a responsive pleading, the [Board] can determine which facts support which claims and whether the plaintiff has stated any claims upon which relief can be granted, and, at trial, the [Board] can determined that evidence which is relevant and that which is not."

Fikes v. City of Daphne, 79 F.3d 1079, 1082 (11th Cir. 1996).

The Federal Rules of Civil Procedure also provide a cure for improper conjoiner and obfuscation of claims. In particular, if a notice of opposition "is so vague or ambiguous that a party cannot

reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired." Fed.R.Civ.P. 12(e).

In the instant case, Opposer has asserted various allegations, including ownership of its own purported marks, (Notice of Opposition, ¶¶ 1 - 2), a claimed likelihood of confusion, (Notice of Opposition, ¶ 4), a claim of "associated with Opposer," or to "falsely suggest an association with Opposer," (Notice of Opposition, ¶¶ 6 - 7), a claim that Applicant's use of its applied for mark will "disparage . . . and/or bring Opposer into disrepute," (Notice of Opposition, ¶ 7), and that registration of Applicant's mark "would be inconsistent with Opposer's rights," (Notice of Opposition, ¶ 8). All of the above are asserted as a single, undifferentiated count, without reference to the specific statutory basis, if any, upon which Opposer would rely.

While Applicant certainly can and intends to deny each such claim, failure to designate the statutory basis for the claim in a separate count, as required, whether brought under theories of dilution, Section 43(C), or other provisions of Section 2, each of which have different elements and different defenses, does not allow Applicant to frame a responsive pleading with appropriate affirmative defenses.

Moreover, a more definite statement would allow the Board and

Applicant to determine which facts are alleged and must be proved to support which claims and whether the Opposer has stated any claims upon which relief can be granted, and, at trial, the Board can determine that evidence which is relevant and that which is not relevant. See Fikes, 79 F.3d at 1082. This would also facilitate a more efficient discovery phase of these proceedings, by eliminating or specifying what discovery may or may not have relevance to the matters at issue.

WHEREFORE, Applicant respectfully request that the Board require Opposer to file and serve an Amended Notice of Opposition, setting forth, in separate numbered Counts, the statutory and factual basis for each separate claim upon which Opposer would rely. Applicant requests leave to file an Answer and Affirmative Defenses, or other response thereto within twenty (20) days of service of such an Amended Notice of Opposition. In the alternative, should the Board deny this Motion, Applicant requests leave to file an Answer and Affirmative Defenses or other response to the Notice of Opposition within twenty days of the Board's ruling thereupon. Applicant further requests that this matter be suspended pending the Board's ruling upon this Motion, as the Board's determination will necessarily impact the scope and extent of discovery in this matter.

Respectfully submitted,

Dated: May 10, 2006

By: 


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
was served on the following by United States first class mail,
postage pre-paid this 10th day of May 2006:

Brian D. Anderson, Esq.
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Respectfully submitted,

By: 

Andrew W. Ransom
Florida Bar No. 964,344

CERTIFICATE OF MAILING

I HEREBY CERTIFY that the original was sent by first class, postage pre-paid U.S. mail, to the United States Patent and Trademark Office, Trademark Trial & Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451, this 10th day of May, 2006.

Respectfully submitted,

By: 

Andrew W. Ransom

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